

App. Serial No. 10/701,882  
Atty. Docket No. R029 1380

### **REMARKS**

Claims 21, 23-43 and 45-52 are pending. Claims 1-20, 22 and 44 have been canceled without prejudice or disclaimer of the subject matter contained therein. Applicants respectfully request reconsideration of the outstanding rejections and allowance of the application as amended.

#### ***Reasons for Entry of Amendments***

Claims 22 and 44 are canceled. Claim 21 is amended to include the subject matter of claim 22. Claim 43 is amended to include the subject matter of claim 44. Claim 39 is amended to recite that side panel tear lines "extend toward the at least one top panel and converge toward one another as they extend toward the top panel" in order to clarify the manner in which the tear lines converge. These amendments do not involve new issues for the Examiner's consideration. Claims 21 and 43 also include this clarifying language. Applicants therefore respectfully request entry of the amendments.

#### ***Allowable Subject Matter***

Claims 26, 27, 30, 48 and 50 are indicated as allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, second paragraph, and to include all of the limitations of the base claim and any intervening claims. Claim 42 is indicated as allowable if rewritten in independent form.

#### ***Rejections under 35 U.S.C. § 112***

Claims 22-33 and 44-51 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants respectfully traverse.

The Examiner states that in claims 22 and 44, the first plurality of tear lines does not converge with the second plurality of tear lines because the tear lines are at different locations on the carton. The Examiner cites the tear lines 58 and 64 as examples of tear lines in Applicants' specification that do not converge.

App. Serial No. 10/701,882  
Atty. Docket No. R029 1380

Applicants traverse on the grounds that claims 22 and 44 recite first and second side panel tear lines that converge toward the top panel, not first and second pluralities of tear lines. Applicants have further amended claims 21, 39 and 43 to recite that the first and second side tear lines “converge toward one another as they extend toward the top panel.” This relationship is exemplified in the embodiment illustrated in Figure 1, in which the side tear lines 56, 58 converge toward the top panel. Applicants believe these amendments obviate any perceived ambiguity in the claims and respectfully request withdrawal of the rejection.

### ***Rejections under 35 U.S.C. § 103***

Claims 21-25, 28, 29, 31, 32, 34-36, 43, 44-47, 49 and 51-52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Merkel et al.* (US 3,002,613) in view of *Mott* (US 2,152,079). Claims 33, 37 and 38 stand rejected as being unpatentable over the references applied with respect to claim 32, and further in view of *Saam* (US 5,927,498) or *Carroll* (US 5,921,398). Claims 39-41 stand rejected as being unpatentable over *Merkel* in view of *Mott* and *Saam* or *Carroll*. Applicants respectfully traverse.

Amended claims 21, 39 and 43 recite first and second side panel tear lines that “converge toward one another as they extend toward the top panel.” *Merkel* fails to disclose such converging tear lines. Accordingly, when *Merkel's* carton is in its display configuration (shown in Figure 6), the upper edge of *Merkel's* carton has a uniform height. As shown in Figure 6, *Merkel's* containers 13 are exposed only at their tops.

In the present application, in the exemplary embodiment illustrated in Figure 2, the opening flap 66 is relatively wide at the bottom panel 18A, 18B, and converges to a relatively narrow section in the top flaps 12A, 12B. As shown in Figure 3, the large face of the opening flap 66 provides sloping side panels 14A, 14B and low front walls (bottom panels 18A, 18B) in the display configuration, which provides greater accessibility to and visibility of pouches 74. This configuration is in part a result of the converging side panel tear lines 56, 58.

In the rejections, the Examiner essentially alleges that *Mott's* teaching may be used to modify the configuration of *Merkel's* tear strip 24 so that *Merkel's* side panels 20a, 20b slope downwardly, and so that *Merkel's* strip 24 is wider in the bottom panel 19. *Mott's* carton, however, fails to disclose tear lines that converge toward a top panel. Further, *Mott's* carton

App. Serial No. 10/701,882  
Atty. Docket No. R029 1380

displays items in back-to-back compartments, rather than side-by-side compartments, as does *Merkel*. The perimeter perforations 12, 12' in *Mott's* carton would therefore not teach one of ordinary skill in the art how to modify *Merkel's* tear strip 24 to provide an opening flap as recited in the present claims.

*Saam* and *Carroll* also fail to disclose converging tear lines, and therefore fail to cure the deficiencies of *Mott* and *Merkel* in disclosing the claimed combinations of elements. In light of the above arguments, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a).

### CONCLUSION

In view of the above remarks, Applicants respectfully assert that the rejections of the claims as set forth in the Final Office Action have been addressed and overcome. Applicants further respectfully assert that all claims are in condition for allowance and request that an early notice of allowance be issued.

If issues may be resolved through Examiner's Amendment, or clarified in any manner, please call the undersigned attorney at (404) 879-2443.

The Commissioner is hereby authorized to charge any required fees or credit any overpayment to Deposit Account No. 09-0528.

Respectfully submitted,

Date: 2/28/06

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Docket No.: R029 1380